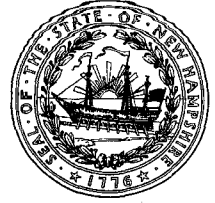




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Earl Clough
22 Beach Pond Road
Wolfeboro, NH 03894

Marjorie Brown
22 Beach Pond Road
Wolfeboro, NH 03894

Martin J. & Kristine L. Mandel
22 Beach Pond Road
Wolfeboro, NH 03894

RE: 25 Beach Pond Road, Wolfeboro, NH
Wetlands Bureau File #2003-0912

**ADMINISTRATIVE ORDER
No. WD 06-031**

July 18, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Earl Clough, Marjorie Brown, and Martin J. & Kristine L. Mandel pursuant to RSA 482-A:6. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Earl Clough, Marjorie Brown, and Martin J. & Kristine L. Mandel, hereinafter referred to as the "Responsible Parties", are individuals having a mailing address of 22 Beach Pond Road, Wolfeboro, NH 03894.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Env-Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:11, IV states "[DES] shall not grant a permit with respect to any activity proposed to be undertaken in or adjacent to an area mapped, designated and filed as a prime wetland pursuant to RSA 482-A:15 unless the department first notifies the local governing body, the planning board, if any, and the conservation commission, if any, in the municipality within which the wetlands lie, either in whole or in

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DES Web site: www.des.nh.gov

part, of its decision. Any such permit shall not be issued unless the department is able, specifically, to find clear and convincing evidence on the basis of all information considered by the department, and after public hearing, that the proposed activity, either along or in conjunction with other human activity, will not result in the significant net loss of any of the values set forth in RSA 482-A:1."

4. Env-Wt 304.06(a) requires jurisdictional wetlands and surface waters to be protected with erosion and siltation control measures throughout construction until all disturbed surfaces are stabilized.

5. The Responsible Parties are the owners of a property on 25 Beach Pond Road in Wolfeboro, more particularly identified on the Wolfeboro Tax Map 145 as Lot 33 ("the Property").

6. On May 16, 2003 and July 21, 2003 DES personnel conducted a site inspection on the Property and documented the following:

- a. An approximate 575 sq ft mound of unstable fill and a 9" culvert had been piled in a wetland for a culvert crossing.
- b. No erosion controls were in place to prevent the fill from further eroding into the wetland.
- c. Significant vegetative debris had been placed in the wetland near the outlet of the culvert.
- d. The crossing connected an upland at the front of the Property, along Beech Pond Road, to another upland at the back of the Property (to the southeast of Beech Pond Road).
- e. The Prime Wetland map on file with DES for the town of Wolfeboro, titled "Plan of Wetland #26 a, b, and c" and dated December 22, 2000, indicates that the crossing could be located in a Prime Wetland. The Prime Wetland map also appears to incorrectly identify the upland on the opposite side of the crossing as wetland.

7. DES has no record of permits issued for activities regulated under RSA 482-A on the Property.

8. During the May 21, 2003 inspection Mr. Clough provided the following information to DES personnel:

- a. There was an existing road which dipped down in the location which he had placed the fill and culvert.
- b. He planned to build a house on the uplands in the back of his Property.
- c. The fill for the crossing was left in a large unstable pile because his bulldozer broke down, leaving him unable to spread the fill.

9. Also during the May 21, 2003 inspection, DES personnel explained to Mr. Clough the implications of carrying out a project in an area designated as Prime Wetlands and without a permit from DES. Mr. Clough was then issued a "Wetlands Inspection Report" with the following requests:

- a. "[L]evel all/stabilize existing fill at [the] crossing".
- b. "[I]nstall silt fence at [the] toe of slope on both sides [of the crossing]".
- c. "Submit an after-the-fact application for 575 sq ft of fill for [the] crossing by September 1, 2003".

10. Env-Wt 703.04 states that a Prime Wetland boundary may be contested or altered to be more precise by providing relevant data and evidence to DES and the local conservation commission.

11. On July 23, 2003, DES issued Mr. Clough a more detailed letter explaining that the crossing and the area he wished to build a home on were designated as Prime Wetland by the Town of Wolfeboro. To retain the crossing and/or build a house at the location he proposed, he would need to contest the Prime Wetland boundary in accordance with Wt 703.04. More specifically he would need to retain a certified wetland scientist to more accurately delineate the Prime Wetland boundary on the Property for submittal to the local Conservation Commission and to DES. The letter also included deadlines for the submittal of information.

12. Mr. Clough did not meet the deadlines proposed by DES in the Wetland Inspection Report dated May 21, 2003, or in the letter dated July 23, 2003.

13. On February 23, 2005, DES issued a letter to Mr. Clough inquiring about the status of the issues at hand. The letter also included a request to respond to the letter within 20 days.

14. To date Mr. Clough has not contacted DES in regards to this matter nor has he submitted any of the information requested by DES.

15. On May 24, 2006, DES personnel conducted a site inspection on the Property and documented the following:

- a. The wetlands crossing had been graded level.
- b. The banks of the crossing had naturally stabilized.
- c. Surface water was present throughout the wetland adjacent to the inlet of the culvert, but not at the outlet of the culvert.
- d. To the northwest of the crossing, a large pile of leaves and vegetative debris had been placed at the top of a hill and had migrated or been pushed downhill into the wetland near the culvert outlet.
- e. To the southeast of the crossing, sand and vegetative debris were stored adjacent to a wetland. The sand was eroding into the wetland along 30' of the edge of the wetland and vegetative debris had been piled in a 15' x 30' (450 square feet) area of the wetland.

D. DETERMINATION OF VIOLATIONS

1. The Responsible Parties have violated RSA 482-A:3, I, by placing 575 square feet of fill for a culvert crossing in a wetland designated as a prime wetland by the Town of Wolfeboro without a permit from DES.
2. The Responsible Parties have violated Wt 304.06(a) by neglecting to install erosion controls resulting in sedimentation and filling of a wetland.

E. ORDER

Based on the above findings, DES hereby orders the Responsible Parties as follows:

1. **Immediately** cease carrying out all work in wetlands and surface waters on the Property except as specifically Ordered in E.2 through E.6, below.
2. **Immediately** install erosion controls (ex. silt fence) and implement stabilization methods (ex. seed and mulch) to prevent the sand pile and vegetative debris piles from eroding further into the wetlands.
3. **Within 15 days from the date of this Administrative Order**, retain a certified wetland scientist to prepare a restoration plan in accordance with Items E.3.a through E.3.g, below, and to supervise implementation and monitoring of the restoration, as well as submit restoration monitoring reports. Also **within 15 days of this Order**, submit a letter of retention from the certified wetland scientist to DES documenting compliance with this provision of the Order.
4. **Within 45 days from the date of this Order**, submit to DES for review and approval, a wetland restoration plan for the Property. The restoration plan shall be prepared and stamped by a NH certified wetland scientist and stamped by a licensed surveyor. The plan shall address the removal of the culvert and fill from the wetlands, removal of sediment and vegetative debris from the wetlands, and restoration of all impacted wetlands. The plan shall include the following:
 - a. Existing conditions and land topography with dimensions drawn to scale including wetland boundaries delineated in accordance with the 1987 Army Corps of Engineers Wetland Delineation Manual;
 - b. Proposed conditions after re-establishing the jurisdictional area;
 - c. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration areas;
 - d. A detailed description of the proposed planting plan for the stabilization and re-vegetation of the restoration areas and of the method of control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*). (Wetland tree and shrub plantings shall be proposed in the area of the crossing and shall be reflective of existing species in the adjacent wetland.);
 - e. A description of the proposed restoration sequence detailing the methods for accomplishing restoration and including an anticipated restoration compliance date;
 - f. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project.
 - g. The dates of when at least two monitoring progress reports, completed by a NH certified wetland scientist, will be submitted to DES, documenting the impact area over two successive growing seasons following completion of the restoration project.
5. Implement the restoration plan after receiving written approval from and as conditioned by DES.
6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Stacey Herbold, Compliance Investigator
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: sherbold@des.state.nh.us

7. A Standard Dredge and Fill application must be filed and a permit obtained for any proposed crossing in this location. Any application will be reviewed, approved or denied, based on the regulations in place at the time of filing.

F. APPEAL

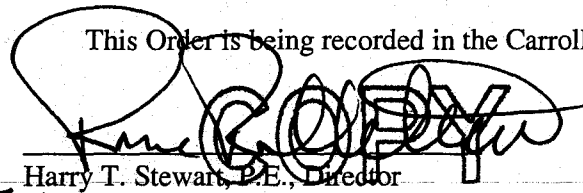
Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

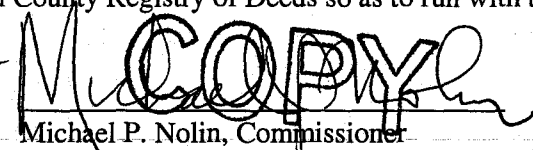
Filing an appeal or motion for reconsideration of the Order does not automatically relieve the Responsible Parties of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Responsible Parties remain obligated to comply with all applicable requirements. DES will continue to monitor the Responsible Parties' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner

Certified Mail/RRR: 7006 0100 0005 8153 5344

cc: Gretchen R. Hamel, Administrator, DES Legal Unit
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Carroll County Registry of Deeds
Wolfeboro Selectmen
Wolfeboro Conservation Commission
File # 2003-0912